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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

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| *In the Matter of*<br>Application by BellSouth Corporation,<br><br>BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana | } | CC Docket 98-121 |

# COMMENTS OF THE PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

THE PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
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August 4, 1998

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## SUMMARY OF ARGUMENT

The Paging and Messaging Alliance of the Personal Communications Industry Association ("PMA") urges the Commission to deny BellSouth's application under section 271 of the Telecommunications Act of 1996. It is not in the public interest to permit BellSouth into the long distance market until such time as it complies fully with all of its interconnection obligations, including its obligations toward paging companies and other providers of commercial mobile radio services ("CMRS"). At this time, BellSouth continues to *charge* PMA members who provide paging services in Louisiana for *BellSouth-originated* traffic. These practices violate specific provisions of the Telecommunications Act of 1996. They also violate the Commission's long-standing policy, embodied in regulations adopted both before and after the Act, of requiring mutual compensation between local exchange carriers ("LECs") and CMRS providers. The Eighth Circuit sustained these requirements, the Common Carrier Bureau reaffirmed these requirements, they have not been appealed to the Supreme Court, and they are therefore in full force and effect today.

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## COMMENTS OF THE PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Paging and Messaging Alliance of the Personal Communications Industry Association ("PMA")[1] respectfully submits its comments on the application by BellSouth Corporation and its affiliates ("BellSouth") to provide in-region, interLATA services in Louisiana. PMA[2] urges the Commission to deny the application on the ground that it is not in the public interest to permit BellSouth into the long distance market until such time as it complies fully with all its interconnection obligations, including its obligations toward paging

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[1] PCIA is the international trade association created to represent the interests of both the commercial and private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance; the Broadband PCS Alliance; the Mobile Wireless Communications Alliance; the Site Owners and Managers Association; the Association of Wireless Communications Engineers and Technicians; and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] PMA represents both traditional paging service providers and narrowband PCS licensees. PMA was formerly the Paging and Narrowband PCS Alliance (PNPA) which has consistently filed comments regarding all Bell Company Section 271 applications.

companies and other providers of commercial mobile radio services ("CMRS"). At this time, BellSouth continues to *charge* PMA members who provide paging services in Louisiana for *BellSouth-originated* traffic. These practices violate the specific provisions of the Telecommunications Act of 1996, the regulations adopted by the Commission both before and after that Act, and the Commission's long-standing policy of mutual compensation between local exchange carriers ("LECs") and CMRS providers.

**BellSouth Is Not Complying with Its Interconnection Obligations**

The Commission has long recognized that both wireline and wireless service providers are carriers, and that each should be obligated to interconnect for the purpose of terminating the other's traffic.[3] Over ten years ago, the Commission expressly stated that wireline/cellular interconnection should be based on the principle of "mutual compensation" — that is, that mobile service providers and LECs "are equally entitled to just and reasonable compensation for their provision of access."[4] The Commission adopted these policies pursuant to section 201 of the Communications Act of 1934.[5]

When Congress amended the Communications Act in 1993 to create a comprehensive federal framework for commercial mobile radio services,[6] the Commission reaffirmed its

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[3] *Cellular Communications Systems*, 86 F.C.C. 2d 469, 496 (1981), *recon.*, 89 F.C.C. 2d 58 (1982).

[4] *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 F.C.C. Rcd. 2910, 2915 (1987), *recon.*, 4 F.C.C. Rcd. 2369 (1989).

[5] 47 U.S.C. § 201.

[6] 47 U.S.C. § 332. Section 332 expanded the Commission's authority under section 201 of the Act to order interconnection requested by CMRS providers. 47 U.S.C. § 332(c)(1)(B).

reciprocal compensation policies and extended them to all CMRS providers.[7] At that time, the Commission adopted a new regulation on LEC-CMRS interconnection that expressly requires "mutual compensation."[8] LECs must pay CMRS providers "reasonable compensation . . . in connection with terminating traffic that originates on facilities of the local exchange carrier," and CMRS providers must pay for CMRS-originated traffic.[9] By requiring LECs to *compensate* CMRS providers for LEC-originated traffic (and *vice versa*), the regulation prohibits any LEC from *collecting* from a CMRS provider for LEC-originated traffic. The Commission has confirmed that LEC attempts to charge CMRS providers for LEC-originated traffic violate section 20.11 of the Commission's rules.[10]

These same obligations were statutorily imposed by the Telecommunications Act of 1996.[11] Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[12] Paging providers, like

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[7] *Implementation of Sections 3(n) and 332 of the Communications Act,* 9 F.C.C. Rcd. 1411, 1497-1501 (1994).

[8] 47 C.F.R. § 20.11(b), *reprinted as originally adopted at* 9 F.C.C. Rcd. 1411, 1520-21

[9] *Id.*

[10] *Local Interconnection Order,* 11 F.C.C. Rcd. at 16044 ("we conclude that, in many cases, incumbent LECs . . . imposed charges for traffic originated on LEC providers' networks . . . in violation of section 20.11 of our rules"). While the Commission has invoked sections 251 and 252 of the Telecommunications Act of 1996 to promulgate new interconnection requirements in Part 51 of the Commission's rules (discussed below), the Commission retains its section 332 jurisdiction, *Local Interconnection Order,* 11 F.C.C. Rcd. at 16005, as exercised in section 20.11 of the Commission's rules.

[11] Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

[12] 47 U.S.C. § 251(b)(5). Significantly, this is an obligation so fundamental that it is imposed on *all* LECs, not just incumbents.

all other CMRS providers, offer "telecommunications."[13] Thus, the reciprocal compensation obligation of section 251(b)(5)—which forbids LEC charges for LEC-originated traffic — applies to paging providers as well as other CMRS providers. The Commission made this explicit in its *First Report & Order,*[14] where it stated, "[*A*]*ll* CMRS providers offer telecommunications. Accordingly, LECs are obligated pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, *including paging providers,* for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation . . . ."[15] Again, the Commission noted that section 251(b)(5), by requiring the LEC to *compensate* the CMRS provider for LEC-originated traffic, necessarily prohibits any arrangement by which the LEC *charges* the CMRS provider for LEC-originated traffic.[16]

The FCC codified its interpretation in section 51.703(b) of its rules, which states that "[a] LEC *may not assess charges* on *any other telecommunications carrier* for local telecommunications traffic that originates on the LEC's network."[17] Furthermore, the Common Carrier Bureau has confirmed that Section 51.703(b) forbids *all* LEC charges for LEC-originated

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[13] Defined at 47 U.S.C. § 153(43); the fact that a paging or other wireless company provides "telecommunications" services does not suggest in any way that it would be considered a "telephone exchange service" for purposes of Track A analysis. 47 U.S.C. § 153(47)(A).

[14] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 F.C.C. Rcd. 15499 (1996) ("*First Report & Order*").

[15] *Local Interconnection Order,* 11 F.C.C. Rcd. at 15997 (emphasis added). *See also id.* at 16016.

[16] *Id.* at 16016.

[17] 47 C.F.R. § 51.703 (1996) (emphasis added)

traffic.[18] Unequivocally, the Common Carrier Bureau stated that it "finds no basis for the argument advanced by SWBT that LECs are permitted to assess charges on CMRS carriers to recover the costs of facilitites that are used by LECs to deliver traffic to CMRS carriers."[19]

Despite these rulings, *BellSouth continues to charge paging providers in Louisiana for the facilities used to transport BellSouth-originated traffic.*[20] In fact, BellSouth recently filed suit against Airtouch Paging Inc. alleging that Airtouch is responsible for these facilities charges.[21] This intransigent behavior strikes at the heart of the Telecommunications Act of 1996 and the Commission's corresponding implementing regulations.

**State Regulatory Commissions Have Given Deference to the FCC's Rules and Have Prohibited LECs from Charging CMRS Carriers for Terminating LEC-originated Traffic**

In deference to the FCC, state regulatory authorities in California, Oregon and Minnesota have also interpreted the reciprocal compensation requirement of sections 251 and 252 as prohibiting a LEC from charging its co-carriers for calls that originate on the LEC's network.[22]

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[18] Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, Fed. Communications Comm'n, to Keith Davis, Cathleen Massey, Kathleen Abernathy, Mark Stachiw, and Judith St. Ledger-Roty (December 30, 1997). A copy is attached at Appendix A.

[19] *Id.* at 2

[20] Letters evidencing BellSouth's unlawful charges are attached at Appendix B.

[21] *BellSouth v. Airtouch*, No. 98 CV-0293 (N.D.Ga. filed Jan. 30, 1998). A copy of said complaint is attached at Appendix C.

[22] *See*, attached hereto in Appendix D, *Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell*, California PUC, A.97-02-003 (May 21, 1997); *Petition of AT&T Wireless Services, Inc., for Arbitration of an Interconnection Agreement with U.S. West Communications, Inc. Pursuant to 47 U.S.C. § 252(b)*, Minnesota PUC, P-421/EM-97-371 (July 30, 1997); *Petition of AT&T Wireless Services, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to the Telecommunications Act of 1996*, Oregon PUC, 97-290 (August 4, 1997).

In California, for example, the Public Utilities Commission (PUC) rejected an arbitrated interconnection agreement between Cook Telecom, Inc., a one-way paging company, and Pacific Bell. The California PUC found that congressional intent and the corresponding FCC rules required LECs to interconnect with *all* providers of communication services, and to compensate each co-carrier for the costs that it incurs in terminating calls to the called party that originate on the LEC's network.[23] Pacific Bell had argued that paging providers were not entitled to reciprocal compensation because paging services are one-way, and paging providers do not originate any calls for termination on the LEC's network. The California PUC properly rejected this argument:

> We believe that Congress intended that each and every carrier should be compensated for the costs that it incurs in terminating traffic, and did not intend to deny a class of carriers—in this case, one-way paging—the right of compensation simply because there is no traffic terminated on the local exchange carrier's network.[24]

Subsequently, the California PUC has added:

> Although Cook's paging service operates differently from the technology than an exchange carrier, such as Pacific Bell, there is no such denying that Cook provides a telecommunication service and performs a termination function [footnote omitted]... Cook's terminal receives, or terminates, calls that originate on Pacific Bells network, and then transmits the calls from its paging terminal to the pager of the party called, just as an end office switch terminates and then transmits a call to the telephone of the called party.[25]

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[23] *Cook Decision* at 3.

[24] *Id.* at 4.

[25] *Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell,*

More significantly, on July 10, 1998, the California PUC issued a report[26] stating that failure by a LEC to meet its paging interconnection obligations precludes that LEC from meeting the 14-point competitive checklist outlined at section 271 (c)(2)(B) of the Act.[27] Specifically, California PUC staff have determined that "Pacific Bell's refusal to execute interconnection agreements with paging companies" will preclude Pacific Bell From receiving approval to offer long distance service in California.[28]

**The Eighth Circuit Sustained the Commission's Rules Regarding Reciprocal Compensation as Applied to CMRS Providers and These Rules Have Not Been Appealed to the Supreme Court**

For months, BellSouth relied on the Eighth Circuit's stay of the Commission's interconnection and pricing rules when answering complaints from paging carriers about its policy of charging transport fees for BellSouth originated traffic.[29] This excuse is no longer available. Both section 51.703(b) and 51.709(b) were among the regulations expressly withheld from *vacatur* by the Eighth Circuit with respect to CMRS providers.[30] Both regulations apply with full force to LEC-CMRS interconnection.[31]

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California PUC, 97-09-122. September 14, 1997

[26] Pacific Bell (U 1001 C) and Pacific Bell Communications *Notice of Intent to File Section 271 Application for InterLATA Authority in California* (CA PUC Telecom. Div. July 10, 1998) (Initial Staff Report), Chp. III, Pt. A.

[27] 47 U.S.C. §§ 271(c)(2)(B)(i)-(xiv).

[28] *Supra* note 27

[29] *See, e.g.*, letters attached in Appendix B from David M. Falgoust to Kathryn Wenrick (February 19, 1997) and David M. Falgoust to Frederick M. Joyce (February 19, 1997).

[30] *Iowa Utilities Bd. v. FCC,* 120 F.3d 793, 800 n.21 (8th Cir. 1997).

[31] *See* Public Notice, *Summary of Currently Effective Commission Rules for Interconnection Requests by Providers of Commercial Mobile Radio Service,* FCC 97-344 (Sept. 30, 1997).

It is important to note that a petitioning group, the Mid-Sized Incumbent Local Exchange Carriers, had presented the Eighth Cirucit Court with the argument that "the FCC's rules requiring mutual and reciprocal compensation of paging companies should be set aside [because] the origination and termination of traffic between a LEC's network and that of a paging company is not 'mutual and reciprocal' since the paging company's customers do not originate calls."[32] Ultimately, the Eighth Circuit Court specifically upheld the Commission's LEC-CMRS interconnection rules *without denying paging carriers the benefits accorded other CMRS carriers*.[33] Significantly, no party has challenged this ruling at the Supreme Court.[34] This analysis makes clear that the entitlement of paging companies to reciprcal compensation has been ruled upon by the Commission, upheld by the Eighth Circuit, will not be argued at the Supreme Court, and is now final.

In correspondence with paging carriers, BellSouth repeatedly promised that it would "reevaluate" its policy of charging paging carriers after the Eighth Circuit issued its decision.[35] Yet, despite the Eighth Circuit Ruling, the Common Carrier Bureau's December 30, 1997 letter and the fact that this issue has not been appealed to the Supreme Court, BellSouth has continued to ignore its clear-cut obligation to stop charging for BellSouth originated calls.

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32 *See* Brief of the Mid-Sized Incumbent Local Exchange Carriers, Case No. 96-3321, Nov. 18, 1996, at 51.

33 *Supra* note 31.

34 *Iowa Utilities Bd. v. FCC,* 120 F.3d 793, *cert. granted,* 118 S. Ct. 879, (1998).

35 *Supra* note 30.

**BellSouth's Application Under Section 271 Cannot Be Granted Until BellSouth Meets Its Interconnection Obligations.**

The Telecommunications Act of 1996 amended the Communications Act of 1934 to add section 271 governing Bell Operating Company ("BOC") entry into interLATA services. Section 271 permitted the BOCs to provide out-of-region, interLATA services immediately, but required them to apply to the FCC for authority to provide in-region, interLATA services. Section 271 forbids the Commission from granting such an application unless it finds, among other things, that "the requested authorization is consistent with the public interest, convenience, and necessity."[36] Until BellSouth meets its reciprocal compensation obligations toward paging carriers and stops charging for BellSouth-originated traffic, its entry into in-region, interLATA services would not meet the public interest.

Approval of the BellSouth application at this time would be inconsistent with the public interest for several reasons. First, the Commission has previously announced that swift implementation of reciprocal compensation for LEC-CMRS interconnection is essential to the public interest. Indeed, in a Notice of Proposed Rulemaking released less than a month before the Act was signed into law, the Commission stated, "Any significant delays in the resolution of issues related to LEC-CMRS interconnection compensation arrangements, combined with the possibility that LECs could use their market power to stymie the ability of CMRS providers to

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[36] 47 U.S.C. § 271(d)3.

interconnect (and may have incentives to do so), could adversely affect the public interest."[37] Congress underscored the public interest in reciprocal compensation by expressly incorporating it into the statutory language of the Act. Yet over two years have passed since that time and BellSouth continues to insist on being paid by paging providers for traffic BellSouth originates. This is, by any standard, a "significant delay," that has "adversely affect[ed] the public interest."[38] Surely the public interest in eradicating these outlawed charges is not less important now that Congress has spoken, nor less urgent now that over two years have passed without compliance.[39]

Moerover, the Commission's own enforcement credibility is at stake. Over the last ten years, the Commission has repeatedly proclaimed that LEC-CMRS interconnection should be based on principles of reciprocal compensation. The Eight Circuit held that section 51.703 was a valid exercise of Commission jurisdiction. In December, the Common Carrier bureau reiterated that paging carriers fall within the ambit of section 51.703. Yet, BellSouth continues to charge paging providers for calls originated by BellSouth's customers.

In the *Local Interconnection Order*, the Commission acknowledged that the promulgation of rules is useless if the rules are not followed:

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[37] *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 F.C.C. Rcd. 5020, 5047 (1996).

[38] *Id.*, 11 F.C.C. Rcd. at 5047.

[39] CMRS concerns should figure prominently in the Commission's consideration of this application for another reason. An express finding based on the experience of PMA's members would be squarely with the Commission's unquestioned jurisdiction over CMRS providers, and would therefore tend to insulate a denial of BellSouth's application from reversal on appeal.

> Because of the critical importance of eliminating these barriers to the accomplishment of the Act's pro-competitive objectives, *we intend to enforce our rules in a manner that is swift, sure, and effective*. . . . We recognize that during the transition from monopoly to competition it is vital that we and the states vigilantly and vigorously enforce the rules that we adopt today and that will be adopted in the future to open local markets to competition. *If we fail to meet that responsibility, the actions that we take today to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective.*[40]

Having promised "swift, sure, and effective" enforcement — and having acknowledged that nothing less than the success of the 1996 Act may well depend on that enforcement — the Commission simply cannot *affirmatively reward* a carrier that refuses to acknowledge the rules necessary to shape the emerging, competitive future. Otherwise, the LECs lack the proper incentives to negotiate in good faith and the FCC forfeits the credibility necessary for effective regulation.

Congress knew that the only way to elicit the BOCs' cooperation in opening up the local bottleneck was to condition their entry into the long-distance market on full satisfaction of interconnection obligations. That is the whole theory of section 271. The Commission, having failed for ten years to elicit the BOCs' cooperation on LEC-CMRS reciprocal compensation, must not give away the in-region, interLATA market until BellSouth keeps up its end of the deal. Until BellSouth complies with its reciprocal compensation obligations to paging carriers, it will not be in the public interest to permit BellSouth into the long distance market in Louisiana or anywhere else in its region.

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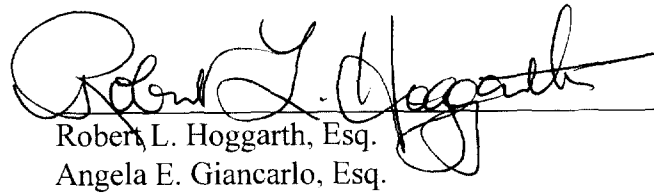
[40] *Local Interconnection Order*, 11 F.C.C. Rcd. at 15511-12 (emphasis added).

## CONCLUSION

For the reasons set forth above, BellSouth is not yet in compliance with the Commission's interconnection rules. To approve its application under section 271 would be contrary to the rule of law and decidedly not in the public interest. PMA therefore urges the Commission to deny the BellSouth application and make clear that it will deny all such applications in the future if the applicant does not meet the Commission's reciprocal compensation requirements.

Respectfully submitted,

THE PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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August 4, 1998

# Appendix A

Federal Communications Commission
Washington, D.C. 20554

DA 97-2726

December 30, 1997

Mr. Keith Davis
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One Bell Plaza
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Dallas, TX 75202

Ms. Cathleen A. Massey
AT&T Wireless Services, Inc.
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20036

Ms. Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N St., N.W.
8th Floor
Washington, D.C. 20036

Mr. Mark Stachiw
AirTouch Paging
12221 Merit Drive
Suite 800
Dallas, TX 75251

Ms. Judith St. Ledger-Roty
Kelley Drye & Warren
1200 19th St., N.W.
Suite 500
Washington, D.C. 20016

Dear Mr. Davis, Ms. Massey, Ms. Abernathy, Mr. Stachiw, and Ms. St. Ledger-Roty:

This letter responds to letters from Southwestern Bell Telephone (SWBT) dated April 25, 1997 and May 9, 1997, and from AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc., and PageNet, Inc. dated May 16, 1997, requesting that the Common Carrier Bureau (Bureau) clarify whether the Commission's current rules permit a local exchange carrier (LEC) to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network. The Bureau sought public comment on these letters on May 22, 1997.[1] Certain LECs, including SWBT, contend that Section 51.703(b) of the Commission's rules, 47 C.F.R. § 51.703(b),[2] governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the

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[1] *See Pleading Cycle Established for Comments on Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers*, DA 97-1071 (rel. May 22, 1997).

[2] Section 51.703(b) of the Commission's rules was stayed by the United States Court of Appeals for the Eighth Circuit. *Iowa Utils. Bd. v. FCC*, 96 F.3d 1116 (8th Cir. 1996) (Temporary Stay Order of September 27, 1996); *Iowa Utils. Bd. v. FCC*, 109 F.3d 418 (8th Cir. 1996) (Order Granting Stay Pending Judicial Review of October 15, 1996). The Eighth Circuit lifted its stay of Section 51.703(b) on November 1, 1996. *Iowa Utils. Bd. v. FCC*, No. 96-3321, Order Lifting Stay in Part (8th Cir., November 1, 1996). In its July 18, 1997 order, the Eighth Circuit upheld Section 51.703 as a valid exercise of the Commission's jurisdiction. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21, 820 n.39 (8th Cir. 1997).

"facilities" used to transport that traffic.[3] For the reasons discussed below, we conclude that the Commission's rules prohibit a LEC from imposing such charges.

The Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996,[4] requires LECs to "establish reciprocal compensation agreements for the transport and termination of telecommunications."[5] In the *Local Competition Order*, the Commission concluded that commercial mobile radio service (CMRS) providers such as paging carriers offer "telecommunications" as defined in the Act, *see* 47 U.S.C. § 153(43), and that LECs accordingly "are obligated, pursuant to section 251(b)(5) [of the Act,] . . . to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks."[6]

With respect to such compensation arrangements, the Commission adopted Section 51.703(b) of its rules, which states that a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."[7] In adopting this rule, the Commission stated, with specific reference to paging and other CMRS providers: "As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."[8] Given the Commission's clear statement that LECs must provide traffic originating on their networks to CMRS carriers "without charge," the Bureau finds no basis for the argument advanced by SWBT that LECs are permitted to assess charges on CMRS carriers to recover the costs of facilities that are used by LECs to deliver traffic to CMRS carriers.

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[3] *See, e.g.*, Anchorage Telephone Utility Comments at 2; BellSouth Reply Comments at 2. In contrast, Bell Atlantic and Sprint, for example, have indicated that they believe that Section 51.703(b) precludes them from charging paging carriers for interconnection facilities. *See, e.g.*, Bell Atlantic Reply Comments at 3, Sprint Comments at 2.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

[5] 47 U.S.C. § 251(b)(5).

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order (*Local Competition Order*), 11 FCC Rcd 15499, 15997 (1996).

[7] 47 C.F.R. § 51.703(b).

[8] *Local Competition Order*, 11 FCC Rcd at 16016.

Accordingly, we conclude that the Commission's current rules do not allow a LEC to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network. Our conclusion is based on the text of Section 51.703(b), as explained by the Commission in the *Local Competition Order*. We note that this issue is subject to pending petitions for reconsideration of the *Local Competition Order* in CC Docket No. 96-98.[9] The Commission will consider this issue further based on the record developed in response to those petitions.

Sincerely,

A. Richard Metzger

A. Richard Metzger, Jr.
Chief
Common Carrier Bureau

[9] *See* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53, 922 (1996); *see, e.g.*, Petitions filed by Kalida Telephone Company, Inc., and Local Exchange Carrier Coalition.

# Appendix B

**David M. Falgoust**
General Attorney

**BellSouth Telecommunications, Inc.**
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0767
Facsimile: 404-614-4054

February 19, 1997

Ms. Kathryn Wenrick
Director of Telecommunications
PageMart Wireless
6688 N. Central Expy., Suite 800
Dallas, Texas 75206

Re: Interconnection with BellSouth

Dear Ms. Wenrick:

I am in receipt of your letter dated January 14, 1997, addressed to "South Central Bell" concerning PageMart's interconnection arrangement with BellSouth. You state in that letter that "it is PageMart's position that we should not pay after the effective date of [the FCC's new interconnection rules] any prohibited charges previously assessed by local exchange carriers." None of the charges that you are currently being billed by BellSouth are "prohibited."

On October 7, 1996, BellSouth ceased charging for NNX establishment, pursuant to the directives of the FCC's Second Report & Order in Docket 96-98. The Second Report & Order does not, however, prohibit BellSouth from imposing recurring charges for DID numbers. Hence, with respect to recurring charges for Type 1 DID numbers, BellSouth will perform a cost study specific to CMRS arrangements and reprice such recurring charges based on the cost study. BellSouth will then apply the new recurring charges retroactively to October 7, 1996.

Section 51.703 of the FCC's rules prohibits LECs from assessing charges on other telecommunications carriers for terminating local "traffic" that originates on the LEC's network. As explained in the FCC's First Report & Order in Docket 96-98, this provision was adopted in response to the apparent practice of some LECs which charged CMRS providers originating access charges for delivering traffic to them. BellSouth does not now and never has charged CMRS providers for transporting and terminating local traffic originating on BellSouth's network. While some paging carriers have asserted that section 51.703 applies to "facilities" and requires BellSouth to provide interconnection and transport facilities free to paging carriers, such a reading is contrary to the clear language of the rule and explanatory text of the First Report & Order. Finally, to

the extent that some paging carriers rely on sections 51.707 and 51.709 in support of the "free facilities" position, those rules remain stayed by the Eighth Circuit Court of Appeals. When the Eighth Circuit renders a decision on the pending appeal, BellSouth will reevaluate its position based on the Court's decision. Meanwhile, BellSouth maintains that paging carriers remain obligated to pay for facilities that BellSouth is providing to them pursuant to currently effective tariffs.

I hope this clarifies BellSouth's positions with respect to the issues raised in your letter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

David M. Falgoust

David M. Falgoust

cc: Mr. Randy Ham
Mr. Billy McCarthy

**David M. Falgoust**
General Attorney

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December 11, 1996

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Fourteenth Floor
Washington, DC 20036

Re: Paging Interconnection Agreements between BellSouth and Metrocall

Dear Rick:

I have your letter dated November 19, 1996 to Mr. Billy McCarthy concerning interconnection arrangements between BellSouth Telecommunications, Inc. ("BellSouth") and Metrocall, Inc. ("Metrocall"). You make a number of assertions in that letter about the FCC's First Report and Order in Docket 96-98 (the "Interconnection Order") and its current relevance to the referenced arrangements. While BellSouth agrees with some of your assertions, it disagrees with others.

BellSouth agrees that unless it is modified, section 51.701 of the FCC's rules establishes the Major Trading Area as the local calling area for purposes of reciprocal compensation between LECs and CMRS providers. BellSouth also agrees that the FCC's Second Report and Order ("SR&O") required BellSouth to cease charging CMRS providers NXX establishment charges as of October 7, 1996, the effective date of the SR&O. BellSouth agrees further that section 51.717 of the FCC's rules allows any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 to renegotiate the arrangement if it does not provide for reciprocal compensation.

BellSouth does not agree, however, with the implication in your letter that BellSouth is inappropriately "billing MetroCall for any local LEC/landline based termination or transport charges...." While section 51.703(b) of the FCC's rules prohibits LECs from assessing charges on other telecommunications carriers for terminating local "traffic" that originates on the LEC's network, as explained in the Interconnection Order, this provision was adopted in response to the apparent practice of some LECs which charged CMRS providers originating access charges for delivering traffic to them. *See*

Interconnection Order, para. 1030, and footnote references. BellSouth does not now and never has charged CMRS providers for transporting and terminating local traffic originating on BellSouth's network. There are, therefore, no such charges to "cease."[1]

The Telecommunications Act of 1996 explicitly requires both BellSouth and MetroCall to negotiate in good faith the terms and conditions of interconnection arrangements pursuant to the Act. If Metrocall desires to engage in such negotiation, BellSouth will be happy to do so. I hope that this clarifies BellSouth's positions with respect to the issues raised in your letter. Please do not hesitate to contact me if you have any questions. With best personal regards, I remain

Very truly yours,

David M. Falgoust

cc: Mr. Randy Ham

[1] While for the reasons stated above it is irrelevant to this correspondence, BellSouth also disagrees that the effective date of the FCC rules with respect to which the stay has been lifted is August 30, 1996. Those rules became effective for the first time on November 1, 1996.

David M. Falgoust
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Facsimile 404-614-4054

February 19, 1997

Mr. Frederick M. Joyce
Joyce & Jacobs
1019 19th Street, NW
Fourteenth Floor
Washington, DC 20036

Re: Interconnection with BellSouth

Dear Rick:

In response to your letter dated January 28, 1997, concerning interconnection arrangements between BellSouth and Metrocall, I will attempt, once again, to set forth BellSouth's positions on the issues that you believe remain unclear.

As I advised you previously, BellSouth ceased charging for NNX establishment on October 7, 1996, pursuant to the directives of the FCC's Second Report & Order in Docket 96-98. Contrary to Metrocall's contention, however, the Second Report & Order does not prohibit BellSouth from imposing recurring charges for DID numbers. BellSouth is certainly entitled to recover its costs of providing and administering DID numbers. Hence, with respect to recurring charges for Type 1 (DID) numbers, BellSouth will perform a cost study specific to CMRS arrangements and reprice such recurring charges based on the cost study. BellSouth will then apply the new recurring charges retroactively to October 7, 1996.

BellSouth does not now and never has charged CMRS providers for transporting and terminating local traffic originating on BellSouth's network. Metrocall and some other paging carriers have asserted, however, that Section 51.703 of the FCC's rules requires BellSouth to provide interconnection and transport facilities free to paging carriers. I explained BellSouth's position on this issue in some detail in my letter to you dated December 11, 1996, and will not repeat it here. Furthermore, to the extent that Metrocall relies on Sections 51.707 and 51.709 in support of its position, those rules, of course, remain "stayed" by the Eighth Circuit. When the Eighth Circuit renders a decision on the pending appeal, BellSouth will reevaluate its position based on the Court's decision. Meanwhile, BellSouth maintains that Metrocall remains obligated to pay for facilities that BellSouth is providing to Metrocall pursuant to currently effective tariffs.

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